

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DJUAN HOLDEN,

Defendant-Appellant.

---

UNPUBLISHED

August 20, 1996

No. 179032

LC No. 93013639

Before: Hood, P.J., and Griffin and J.F. Foley\*, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of involuntary manslaughter, MCL 750.317; MSA 28.553, three counts of assault with intent to do great bodily harm, MCL 750.84; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to seven to fifteen years' imprisonment for the manslaughter conviction, five to ten years' imprisonment for the assault convictions, and two years' imprisonment for the felony-firearm conviction. The manslaughter sentence and the assault sentences were ordered to run concurrently, but consecutive to the felony-firearm sentence. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred when it denied his motion for a directed verdict because there was insufficient evidence to submit to the jury the charges of second-degree murder as it related to Darryl Edwards, assault with intent to murder as it related to David Edwards, Wesley Allen and Brandon Edwards, and felony-firearm. In reviewing the denial of a motion for a directed verdict, this Court views the evidence presented by the prosecutor up to the time the motion was made in a light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proved beyond a reasonable doubt. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251(1995). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of an offense. *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995). A court must not weigh the evidence or assess the credibility of the witnesses. *People v Mehall*, 213 Mich App 353, 363; 539 NW2d 593 (1995).

Second-degree murder is a death caused by the defendant with malice and without justification or excuse. *People v Goecke*, 215 Mich App 623, 629; 547 NW2d 338 (1996). Malice requires intent to kill, an intent to do great bodily harm, or an intent to create a high risk of death or great bodily harm with knowledge that such is the probable result. *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993). Here, there was evidence presented that defendant and the codefendant, Kenneth Manns, fired simultaneously into the crowd where Darryl Edwards was standing. Viewing the evidence in a light most favorable to the prosecution, we conclude that the evidence presented could allow a jury to infer that defendant intended to kill, intended to do great bodily harm, or intended to create a high risk of death or great bodily harm with knowledge that such was the probable result. *Id.*

The elements of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). The intent to kill may be proven by inference from any facts in evidence. *Id.* The testimony revealed that codefendant turned his gun toward Brandon Edwards causing him to run, although Brandon was hit by a bullet that ricocheted off the house. The evidence also indicated that defendant and the codefendant both fired down the driveway where Wesley Allen and Brandon were standing. The inference can be made that defendant intended to kill Brandon and Wesley when he fired the shots toward them regardless of which bullets hit them.

We also find that there was sufficient evidence, on the basis of the aiding and abetting theory, for a jury to infer that defendant intended to kill David Edwards. The elements necessary to support a finding that a defendant aided and abetted the commission of a crime are (1) the charged crime was either committed by the defendant or some other person, (2) the defendant gave encouragement or performed acts that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of giving aid and encouragement. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). In this case, there was testimony introduced that the codefendant shot David twice in the leg, and that defendant did not shoot him. However, there was also evidence that defendant and the codefendant fired their guns simultaneously into the crowd where David was located. Clearly, the inference can be made that defendant intended to kill David, or that defendant's conduct encouraged, aided and assisted the codefendant, and that defendant had the requisite intent.

Lastly, we reject defendant's claim that a directed verdict should have been granted with respect to the felony-firearm charge. A conviction of felony-firearm requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995). We have previously concluded that there was sufficient evidence to defeat a motion for a directed verdict on the underlying felonies. We also find that sufficient evidence was presented that defendant committed the charged felonies while knowingly possessing a firearm. See, *People v Coddington*, 188 Mich App 584, 602; 470 NW2d 478 (1991).

Defendant asserts that there was insufficient evidence to convict him of the crimes of involuntary manslaughter with respect to Darryl, assault with intent to do great bodily harm with respect to David,

Brandon and Wesley, and felony-firearm. When determining whether sufficient evidence was presented to sustain a conviction, a court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Barclay, supra*.

Involuntary manslaughter has been defined as “the killing of another without malice and unintentionally, but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself, or by the negligent omission to perform a legal duty.” *People v Booker (After Remand)*, 208 Mich App 163, 170; 527 NW2d 42 (1994). As stated above, there was testimony that defendant and the codefendant fired their weapons simultaneously, into the crowd where Darryl was located. Viewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential elements of involuntary manslaughter were proven beyond a reasonable doubt

The elements of the crime of assault to do great bodily harm less than murder are an attempt or offer with force or violence to do corporeal hurt to another, coupled with an intent to do great bodily harm less than murder. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). Viewing the evidence above in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential elements of assault with intent to do great bodily harm as to Wesley, David, and Brandon were proven beyond a reasonable doubt. Additionally, as concluded previously, there was sufficient evidence presented that defendant committed the charged felonies while knowingly possessing a firearm. See, *Coddington, supra*.

Defendant further argues that the trial court erred in denying his motion to set aside the verdict of involuntary manslaughter because it was against the great weight of the evidence. We disagree. This Court reviews a denial of a motion for a new trial based on a great weight of the evidence argument under an abuse of discretion standard. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). The question is whether the verdict was manifestly against the clear weight of the evidence. *Id.* Here, the testimony at trial indicated that defendant, along with the codefendant, fired their weapons at the same time into a crowd where Darryl Edwards was standing. We conclude that verdict of involuntary manslaughter was not manifestly against the clear weight of the evidence.

Defendant next claims that the he was denied a fair trial because the prosecutor improperly interjected his own personal views and societal problems during closing argument. The test of prosecutorial misconduct is whether defendant was denied a fair and impartial trial. *People v LeGrone*, 205 Mich App 77, 82-83; 517 NW2d 270 (1994). Because defendant failed to object to the alleged instances of prosecutorial misconduct, appellate review is precluded unless our failure to consider these issues would result in a miscarriage of justice. *People v Austin*, 209 Mich App 564, 570; 531 NW2d 811 (1995). We find no miscarriage of justice in this case.

Defendant also argues that the instruction on aiding and abetting was improper. An aiding and abetting instruction is proper where there is evidence that (1) more than one person was involved in the

commission of a crime, and (2) the defendant's role in the crime may have been less than direct participation in the wrongdoing. *People v Head*, 211 Mich App 205, 211; 535 NW2d 563 (1995). We find that the evidence established that defendant and the codefendant simultaneously shot into the crowd where Darryl, David, Brandon, and Wesley were located. On the basis of the evidence presented, we conclude that the instruction was proper.

Defendant finally contends that the trial court's handling of and ruling upon his motion for a directed verdict was improper. Again, we disagree. Defendant made a motion for a directed verdict before the prosecution rested. The trial court took defendant's motion under advisement to review testimony that was placed in question by defense counsel. The motion was further discussed only after the prosecution rested its case. Therefore, it was procedurally correct for the trial court to postpone its ruling on the motion until after the prosecution rested and before defendant placed his proofs on the record. MCR 6.419(A).

Affirmed.

/s/ Harold Hood  
/s/ Richard Allen Griffin  
/s/ John F. Foley